

## INITIAL STATEMENT OF REASONS

### **SPECIFIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THAT THE REGULATION IS INTENDED TO ADDRESS**

Proposition 39, enacted by the voters on November 7, 2000, changed the required majority for local voter approval of public school and community college general obligation bonds from two-thirds to fifty-five percent of the votes. It also amended Education Code section 47614, imposing a new requirement that school districts provide facilities to charter schools operating in their jurisdictions.

As amended, Education Code section 47614 contains the following specific provisions:

- It is the intent of the people that all public school facilities should be shared fairly among all public school pupils, including those in charter schools.
- School districts must make facilities available to charter schools that either are providing classroom education to at least 80 in-district students or have identified at least 80 in-district students meaningfully interested in attending the charter school in the next year.
- Facilities must be sufficient to accommodate the charter school's in-district students.
- The condition of the facilities must be reasonably equivalent to facilities other district students attend.
- Facilities must be contiguous, furnished, and equipped, and remain school district property.
- School districts must make reasonable efforts to provide facilities near where the charter school wishes to locate, and must not move the charter school unnecessarily.
- For use of the facilities, school districts may charge charter schools no more than a pro rata share of the school district's facilities costs paid from unrestricted general fund revenues.
- No school district is required to use unrestricted general fund revenues to rent, buy, or lease facilities for charter schools.
- Charter schools desiring facilities from a school district must provide reasonable projections of the average daily classroom attendance (classroom ADA) of in-district students.
- School districts must base facilities allocations on the projections supplied by the charter school.
- Charter schools must reimburse school districts for over-allocated space in the event that actual in-district classroom ADA is less than projected, based on reimbursement rates to be established by the State Board of Education.
- The measure takes effect on November 8, 2003—sooner in school districts holding successful local school bond elections.

Education Code section 47614 requires the State Department of Education (California Department of Education, CDE) to develop, for State Board of Education (State Board) consideration, regulations implementing the measure. The regulations must include, but are not limited to:

- Defining the terms “classroom ADA,” “conditions reasonably equivalent,” “in-district students,” and “facilities costs.”
- Defining procedures and establishing timelines for the request for, reimbursement for, and provision of, facilities.

In addition, Education Code section 47614(b)(2) requires the State Board to set reimbursement rates for over-allocated space.

At its December 2001 meeting, the State Board approved a Notice of Proposed Rulemaking for proposed regulations that implement the requirements in Education Code section 47614. The proposed regulations (Article 3, Subchapter 19, Chapter 11, Division 1 of Title 5 of the California Code of Regulations) define terms, establish procedures and timelines, and set reimbursement rates for over-allocated space. The proposed regulations approved at the December meeting do not, however, include procedures for resolving disputes between school districts and charter schools regarding the implementation of Education Code section 47614.

The proposed amendment that is the subject of this Initial Statement of Reasons would add two subdivisions related to dispute resolution to the section on procedures and timelines contained in the previously proposed regulations (Section 11969.9).

## **SPECIFIC PURPOSE OF THE REGULATION**

Among other things, the proposed regulations approved in December 2001 would establish procedures and timelines. The proposed regulation that is the subject of this Initial Statement of Reasons would establish additional procedures and timelines related to resolving disputes between school districts and charter schools regarding the implementation of Education Code section 47614.

## **AUTHORITY AND REFERENCE**

Authority for the proposed regulation is provided in Education Code section 47614(b). Education Code section 47614(b) states that the State Board may adopt regulations implementing subdivision (b). The regulations may define the procedures and establish timelines for the request for, reimbursement for, and provision of, facilities.

The reference for the proposed regulations is Education Code section 47614.

## **NECESSITY**

The proposed regulations are necessary to implement the requirements established by Education Code section 47614. Specifically, the proposed regulation establishes a process for school districts and charter schools to use in resolving disputes related to the implementation of Education Code section 47614.

Section 11969.9, as approved at the State Board’s December 2001 meeting, would establish procedures and timelines for the charter school to request facilities and the school district to

provide facilities. Generally, the procedures involve charter school submission of a facilities request containing specified information (subdivisions a through c), school district preparation of a preliminary facilities proposal (subdivision d), charter school response to the preliminary proposal (subdivision d), school district preparation of a final space allocation offer (subdivision e), charter school notification of its intent to occupy or not occupy the offered space (subdivision f), and negotiation of agreements regarding use of and payment for the space (subdivisions h and j).

The rationale for each specific change to Section 11969.9 follows.

Proposed new subdivision (g) specifies that if the charter school believes that the space allocation offer provided by the school district pursuant to subdivision (e) does not comply with statute or regulations, it must initiate the dispute resolution process (proposed to be added in new subdivision l) within 10 days. The purpose of this subdivision is to require prompt initiation of the dispute resolution process so that both parties can move forward on their facilities plans for the next school year without being concerned that unresolved issues may emerge later and derail those plans. Ten days is selected as the time frame because both school districts and charter schools have tight deadlines related to facilities planning throughout the spring and need resolution of facility issues to plan for the next school year.

Proposed new subdivision (l) provides a process for resolving disputes regarding the implementation of Education Code section 47614 and Article 3. The introductory language states that the first choice for resolving disputes shall be the dispute resolution process identified in the charter. Because the charters were, in most cases, developed before the enactment of Proposition 39, however, the identified dispute resolution processes may or may not be applicable to the implementation of Education Code section 47614. Also, the school district may not have been the agency that approved the charter school. Consequently, the regulations provide that if either party determines that the process identified in the charter is not appropriate, the procedures in this subdivision apply.

Subdivision (l)(1) provides that the first step in resolving a dispute is to take it before the appropriate governing board—the school district governing board for disputes initiated by the charter school and the charter school governing board for disputes initiated by the school district. The intent of this requirement is to encourage public discussion of the issue (and possible resolution) at a higher level than staff and, in the case of the school district, by accountable elected officials, before triggering further dispute resolution steps.

This subdivision sets a deadline of 30 days for governing board action. The 30-day timeline provides sufficient time for consideration of the issue at a regularly scheduled governing board meeting for those governing boards that meet monthly, but does not unnecessarily delay the process and final decision regarding the issue.

Subdivision (l)(2) specifies the process for the next step in the dispute resolution process, which is mediation. Mediation is the next step because, in many other contexts, it has helped disagreeing parties to reach resolution of issues both expeditiously and inexpensively. The first step is for the party initiating the dispute resolution process to notify the responding party in

writing that it intends to proceed to mediation, and to request appointment of a mediator from the State Mediation and Conciliation Service (SMCS). This agency assists in mediation of disputes and its services are free. The parties may use a different agency instead of SMCS upon mutual agreement.

The proposed regulation directs the initiating party to request the SMCS to appoint a mediator within seven days. The regulation further directs the initiating party to request appointment of a mediator who is available to meet no later than 45 days after receipt of the request. This timeline is based on input from SMCS. The SMCS can assign a mediator and set up a meeting within a week, but its workload precludes scheduling the mediation meeting itself for a period of up to 60 days. The regulations use a 45-day period to recognize SMCS workload constraints while continuing to keep the process moving to obtain prompt resolution of disputes.

The subdivision requires the party initiating the dispute to prepare a notice of dispute setting forth background information and the basic facts of the dispute. The notice must be prepared within seven days of the appointment of the mediator and must be sent to both the responding party and the mediator. The responding party must file a written response with the mediator and the initiating party within seven days of receipt of the initiating party's notice. The purpose of these requirements is to ensure that both parties are aware of the other party's views before entering mediation. The timelines ensure that the process moves forward as expeditiously as possible.

Subdivision (1)(3) provides that the proceeding is informal and that, if an agreement is reached, the agreement does not set a precedent for other disputes. The purpose of this subdivision is to clarify the manner in which the mediation will be carried out. The informal nature of the process encourages compromise by the parties and is consistent with the use of mediation in other contexts. Making the process more formal and allowing mediated agreements to set precedent would change the nature of the proceeding, and would make it less likely that agreement could be reached.

In the interest of keeping the process moving, the mediation may be terminated by either party if the parties fail to meet within the specified timeline, if there is no agreement within 15 days of the first meeting with the mediator, or if the mediator declares the process at impasse. The 15-day timeline is based on input from SMCS; it provides sufficient time to develop an agreement if one can be developed, but is quick enough to allow the parties to move to the next step expeditiously if it appears an agreement will not be reached.

Subdivision (1)(4), provides for binding arbitration of the dispute if mediation fails to produce an agreement. The reason for binding arbitration is to provide a rapid, final, resolution to disputes. Alternatives such as judicial review or review by the Office of Administrative Hearings involve considerably more time and less certainty than binding arbitration.

The subdivision first provides that the party initiating the dispute resolution process shall request a list of five charter school facility arbitrators from SMCS or another recognized organization if mutually agreed. The parties are required to strike names from the list until only one name remains. The subdivision provides five days for preparation of the list and five days for striking

names. The five-day deadline for list preparation is based on input from SMCS. The five-day deadline for striking names provides sufficient time for the parties to determine their least desirable choices and communicate with each other. The subdivision requires the arbitration to occur within 45 days of selection of the arbitrator. The 45-day timeline allows sufficient time to find a place on an arbitrator's schedule while keeping the process moving as quickly as possible. According to the SMCS, a 45-day timeline is feasible, although it may result in a short list of arbitrators from which to choose. (The schedules of the most popular and experienced arbitrators are booked months in advance.) Subdivision (a)(5) provides that timelines may be extended upon mutual agreement; the parties may elect to invoke this provision if they find their selection of arbitrators is limited.

The subdivision requires the parties to meet in advance of the arbitration hearing to attempt to frame the issue, share evidence, determine whether to transcribe the hearing, and attempt to settle the dispute if possible. The purpose of the pre-hearing meeting is to make the hearing as smooth and productive as possible.

The arbitrator must hold the arbitration hearing and render a binding decision within 30 days. The arbitrator may impose any remedies he or she judges to be proper. The 30-day limit is imposed in the interest of moving as quickly as possible, while respecting the work schedules of arbitrators.

Finally, this subdivision provides that the expenses of the arbitration shall be shared equally between the parties.

Subdivision (1)(5) provides that timelines in the dispute resolution process may be extended upon mutual agreement of the parties. This provision is intended to provide flexibility in the event that both parties believe their interests would be served by extending the timelines. The provision would be invoked, for example, when both parties wish to continue with mediation after the 15-day period because they believe they are close to reaching an agreement.

Subdivision (1)(6) provides that either party may seek judicial review after completing the earlier steps in the dispute resolution process. This subdivision clarifies that the other steps must be completed before judicial review, and that judicial review is available.

Subdivision (1)(7) specifies qualifications for charter school facility arbitrators. The minimum qualifications are (i) professional experience or training with arbitration or mediation procedures in a public education context and (ii) knowledge of applicable disclosures regarding conflicts of interest and ethical conduct for arbitrators. These qualifications are readily discernible by SMCS based on the existing SCMS procedures for developing lists of arbitrators. Essentially, the only qualification that exceeds the existing SCMS requirements is that a portion of the arbitrator's professional experience must be in a public education context.

The subdivision further specifies that additional qualifications may include (i) knowledge and three years of experience related to planning, design, maintenance, or construction of public school facilities, and (ii) participation in training on Proposition 39, and provision of facilities to charter schools. The purpose of these requirements is to ensure that arbitrators have sufficient

knowledge of facilities issues to be able to issue informed decisions. Initially, few arbitrators on the SMCS list, if any, will have these additional qualifications. Ultimately it is hoped that arbitrators who are already on the SMCS list will acquire the additional qualifications, or that people who have these qualifications will become arbitrators and seek placement on the SMCS list. The regulation addresses the current lack of arbitrators in two ways. First, it does not require the additional qualifications but specifies that the additional qualifications may be included, thus allowing SMCS to increase the qualifications it uses to construct the list of charter school facilities arbitrators as additional arbitrators become available over time. Second, the lists issued by SMCS would include information regarding the qualifications of arbitrators, thus providing information needed by the parties to select the arbitrators they believe are the most qualified.

Other changes are non-substantive. Some subdivisions are renumbered to accommodate the addition of two new subdivisions.

## **DISCLOSURES**

These proposed regulation do not impose a mandate on local agencies or school districts.

The State Board has determined that no alternative considered by the State Board or that has otherwise been identified and brought to the attention of the State Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to the affected private persons than the proposed action.

The State Board has made an assessment and determined that the adoption of the proposed regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.